IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9548 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MOHMADUSEN R MANSURI

Appearance:

1. Special Civil Application No. 9548 of 1992

MS KC THAKKAR for MR YOGESH S LAKHANI for Petitioner

MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/02/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation has approached this Court under Article 227 of the Constitution of India, to challenge the award

passed by the Industrial Tribunal, Ahmedabad in Reference (I.T.) No. 781 of 1989 dated 5th March, 1992. By its award, the Tribunal has modified the order stoppage of annual increments for the period of four years with cumulative effect to stoppage of annual increments for the period of four years with non cumulative effect.

2. The facts in short can be stated as under :-

2.1. The respondent at the relevant time was working as a conductor with the petitioner and on the date of incident he was discharging his duties in the bus plying between Indore and Ahmedabad. At Dhar, the checking squad checked the bus and it was found that the respondent had committed certain irregularities. It appears that on that date i.e. on 20th August, 1987, he had permitted two passengers to travel in the bus without ticket and no amount was charged from them. Further that though he had collected fare from two other passengers, no tickets were issued to them and that he had not kept with him the fare table. It also appears that the statements of those passengers were recorded by the checking squad and they were submitted to the Assistant Traffic Inspector who prepared his report and in turn submitted to the appropriate authority on 24th August, 1987. On the basis of the said report, the respondent was chargesheeted wherein the aforesaid charges were levelled against him. It also appears that at the inquiry, due procedure was followed and the respondent was given adequate opportunity to defend his interest. Upon completion of the inquiry, the Inquiry Officer, found that the charges levelled against the respondent were proved and he accordingly submitted his report to the disciplinary authority. The disciplinary authority issued showcause notice and thereafter thought it proper to impose punishment of stoppage of annual increments for the period of four years with cumulative effect. The respondent against the said order preferred an appeal before the first appellate authority. It appears that the appellate authority on 13th July, 1988 issued showcause notice to the respondent for enhancement of the punishment and thereafter second showcause notice dated 15th May, 1989 was issued calling upon him to showcause why he should not be dismissed from the service. The respondent on 23rd May, 1989 served notice under Section 22 (1) of the Industrial Disputes Act, 1947 to the petitioner and thereafter, the dispute that was raised by him was referred to the Conciliation Officer for settlement. The petitioner did not file any reply before the Conciliation Officer and ultimately, his efforts to bring about amicable solution failed and, therefore, the

dispute came to be referred to the Tribunal under Section 10 (1) (d) of the Industrial Disputes Act, for adjudication.

2.1. In the proceedings before the Tribunal, the respondent did not challenge the validity of the inquiry. Thus, the Tribunal upon perusing the record and appreciating the material produced before it, came to the conclusion that requisite procedure was followed and the proceedings of the inquiry were absolutely legal and proper. However, it thought it fit to interfere on the question of quantum of punishment and, therefore, the Tribunal examined the issue from that angle and found that the punishment imposed upon the respondent was harsh and it was required to be modified. Accordingly, he issued the aforesaid direction, while partly allowing the Reference.

3. Ms. K.C. Thakkar for Mr. Y.S. Lakhani learned advocate appearing for the petitioner has submitted that looking to the gravity of the misconduct the punishment imposed by the disciplinary authority was proper. According to her, even the disciplinary authority had taken a lenient view as can be seen from the fact that the first appellate authority had even issued showcause notices firstly for enhancement of the punishment and thereafter for dismissal from the service. She has further submitted that looking to the past record of the respondent it is very clear that he had been in the habit of committing such offence and, therefore, the Tribunal had no reason or justification to interfere on the question of punishment.

3.1. As against that Mr. Mukesh Rathod learned advocate appearing for the respondent has submitted that the Tribunal's finding regarding the punishment being harsh is just and proper and it is not required to be interfered with by this Court. In other words, he has supported the judgment of the Tribunal.

4. Considering the material placed on the record of this petition and also the rival submissions, it is clear that the respondent had committed the aforesaid acts of misconduct, while he was discharging his duties on the route between Indore and Ahmedabad. It is further clear that the inquiry that was initiated against him was properly conducted and no illegality was found by the Tribunal with regard to the compliance of the principles of natural justice and compliance of other procedural requirements. The only question that is required to be seen is, whether the Tribunal was justified in

interfering with the punishment that was imposed by the disciplinary authority. The Tribunal has adequately discussed this aspect in paragraph 10 of its judgment. It was pointed out to it by the learned advocate for the respondent appearing before the Tribunal that the loss that may be caused to the respondent during the entire period of service would be around Rs.1,11,040=00. He has also pointed out that in the past, the Corporation had in other cases imposed very trifle punishments. This submission was of course contested by the petitioner's advocate by pointing out that the financial loss that may be caused to the respondent on account of such punishment would be of Rs.44,446=00. The Tribunal has taken into consideration the rival submissions and it has judged the issue even by taking into consideration the submission that was advanced by the petitioner's advocate that loss would be to the extent of Rs.44,446=00, and came to the conclusion that such loss would be very harsh and the punishment would not be in proposition to the nature of the misconduct committed by him. It may be noted here that the amount of Rs. 18=00 was recovered from him which was in excess to the amount that would have been with the respondent for issuance of ticket, meaning thereby, though the fare was collected, the tickets were not issued. Even considering this aspect, it appears that the Tribunal's finding with regard to punishment being harsh cannot be said to be unreasonable. When the Tribunal has thought it fit to exercise its power under Section 11 (a) of the Industrial Disputes Act, and has appreciated the material produced before it, it will not be proper for this Court to interfere with the same and disturb it while exercising jurisdiction under Article 227 of the Constitution of India. In other words, there is no merit in this petition and it required to be dismissed and accordingly it is dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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